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ORIGINAL

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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

SEP 22 2006

at 3 o'clock and 2 min. 4 M
SUE BEITIA, CLERK

Attorneys for Defendant/Limitation Plaintiff
MORNING STAR CRUISES, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

In the Matter of	)	CV. NO. 03-00672 SOM-BMK
)	
The Complaint of MORNING STAR)	
CRUISES, INC., a Hawaii corporation.	)	CV. NO. 04-00588 SOM-BMK
)	
<u>SHIROH FUKUOKA, Individually and</u>	)	[CONSOLIDATED]
as Personal Representative of THE)	
ESTATE OF MITSUKO FUKUOKA,	)	DEFENDANT/LIMITATION
and as Next Friend of MIHO	)	PLAINTIFF'S MORNING STAR
FUKUOKA, a Minor,	)	CRUISES INC.'S CONCISE
	)	STATEMENT OF FACTS FOR
Plaintiffs,	)	MOTION FOR SUMMARY
	)	JUDGMENT FILED
vs.	)	SEPTEMBER 20, 2006;
	)	EXHIBITS "A"- "C";
MORNING STAR CRUISES, INC., a	)	CERTIFICATE OF SERVICE
Hawaii corporation; JOHN DOES 1-)	

10, JANE DOES 1-10, DOE)	
CORPORATIONS 1-10, DOE	)	Date:
PARTNERSHIPS 1-10, DOE JOINT)	
VENTURERS 1-10, DOE LIMITED	)	Time:
LIABILITY ENTITIES 1-10, DOE)	
NON-PROFIT ENTITIES, 1-10, DOE	)	Judge:
GOVERNMENTAL ENTITIES 1-10,)	
DOE UNINCORPORATED)	
ENTITIES 1-10, and OTHER DOE	)	Trial: February 21, 2007
ENTITIES 1-10,	)	Time: 9:00 a.m.
	)	Judge: Hon. Susan Oki Mollway
Defendants.)	
)	

DEFENDANT/LIMITATION PLAINTIFF'S MORNING STAR
CRUISES INC.'S CONCISE STATEMENT OF FACTS FOR MOTION FOR
SUMMARY JUDGMENT FILED SEPTEMBER 20, 2006

COMES NOW, Defendant/Limitation Plaintiff MORNING STAR CRUISES, INC. (hereinafter "Morning Star"), by and through its attorneys, the law firm of Chee & Markham, and hereby submits its Concise Statement of Facts as to which there are no genuine issues and which facts are essential for the Court's determination of the issues presented in Defendant/Limitation Plaintiff's Motion for Summary Judgment filed September 20, 2006, pursuant to LR 56.1 of the Local Rules of Practice for the United States District Court for the District of Hawaii.


1. Ms. Fukuoka released and discharged Morning Star from liability arising out of any personal injury, accidents, damage to personal property, or fatal accidents resulting from negligence. See Exhibit "A," KBOS Disclaimer Agreement, p. 1.

2. Prior to participating in the SeaWalker activity, Ms. Fukuoka certified to KBOS that she did not have a history of heart disease or high blood pressure. See Exhibit "A," KBOS Disclaimer Agreement, p. 1.

3. Ms. Fukuoka carefully read and understood the Disclaimer Agreement prior to signing it. See Exhibit "A," KBOS Disclaimer Agreement, p. 2.

4. Ms. Fukuoka was given instructions prior to participating in the SeaWalker activity. See Exhibit "B," The Estate of Mitsuko Fukuoka's Response to Limitation Plaintiff's First Request for Interrog, p. 6.; Exhibit "C," Instructions given by Morning Star Cruises (Exhibit "3" of the Motion for Summary Judgment.)

DATED: Honolulu, Hawaii, September 22, 2006.



GREGORY K. MARKHAM
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Attorneys for /Defendant
Limitation Plaintiff
MORNING STAR CRUISES, INC.